

This letter concerns nexus for collection of Illinois Use Tax. See 86 Ill. Adm. Code 150.201(i) and 150.801. (This is a GIL.)

January 26, 2004

Dear Xxxxx:

This letter is in response to your letter dated September 26, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are writing to you on behalf of one of our clients respectfully requesting a General Information Letter (GIL), pursuant to 2 Ill. Admin. Code 1200.120. The GIL should address whether our client is liable for Illinois Retailers' Occupation Tax (ROT) or Use Tax (UT) on its business transactions. GILs respond to inquiries made by taxpayers or their representatives. We understand that GILs discuss tax principles or applications generally and are not binding on the Illinois Department of Revenue (IDOR).

### **Facts**

Our client (hereinafter 'COMPANY') designs and manufactures metal cans for its customers. COMPANY utilizes an assembly-line manufacturing process in creating these cans. Rolling machines move all necessary materials through an integrated assembly line until the metal cans are produced. The manufacturing process is as follows:

- COMPANY's machines are loaded with metal, which is then stamped into the correct shape per a customer's specifications.
- Once stamped, the metal is moved through the assembly line and is treated with chemicals to prepare the metal for painting.

- Next, the chemically-prepared metal proceeds down the assembly line and machinery equipped with printing plates (designed and manufactured by an unrelated third-party to a customer's design specifications) rolls over the stamped metal. Paints and/or inks are transferred onto the stamped metal via these printing plates.
- The stamped and painted metal then moves into drying units. The paints and/or inks do not evaporate but rather become material components of the product.
- After the paints and/or inks are dry, a folding machine folds the stamped metal into the finished cans.
- At this point, the cans are complete and prepared for delivery to COMPANY's customers.

All of the machinery and equipment discussed above is utilized exclusively (100%) in the manufacturing of the metal cans.

### **Issues**

1. Is COMPANY's assembly-line machinery and equipment [such as the rollers used to move the product along the line, the machinery and equipment used to cut and fold the metal, and the machinery and equipment (including the printing plates) used to transfer and dry the paints and/or inks onto the metal] exempt from the Illinois ROT and complementary UT under the Illinois manufacturing machinery and equipment exemption?
2. Are COMPANY's paints and/or inks used in the painting process for the cans exempt from the Illinois ROT as material components of tangible personal property manufactured for sale at retail? In other words, are COMPANY's paints and/or inks used in the painting process exempt from the Illinois ROT under the Illinois resale exemption?

### **Law and Analysis Law**

#### **Law**

Illinois imposes a ROT on persons engaged in selling tangible personal property at retail within the state. 35 ILCS 120/2; 86 Ill. Admin. Code 130.101. The Illinois UT complements the ROT and is imposed on the privilege of using in Illinois tangible personal property purchased anywhere at retail from a retailer. 35 ILCS 105/3; 86 Ill. Admin. Code 150.101. Use tax is not imposed if the seller of the property would not be subject to the ROT, despite all elements of the sale occurring in Illinois. 35 ILCS 105/3-65; 86 Ill. Admin. Code 150.101(c).

#### *Manufacturing Machinery and Equipment Exemption*

The Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. 35 ILCS 105/3-5; 86 Ill. Admin. Code 130.330. To fulfill

the primary use requirement, the machinery and equipment must be used over 50% of the time in the manufacturing or assembling of tangible personal property. 86 Ill. Admin. Code 130.330(d)(1).

The manufacturing process is defined as the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material or materials into a material with a different form, use or name. 86 Ill. Admin. Code 130.330(b)(2). These changes must result from the process in question and be substantial and significant. *Id.* In relation to a recognized integrated business composed of a series of operations that collectively constitute manufacturing, or individually constitute manufacturing operations, the manufacturing process commences with the first operation or state of production in the series, and does not end until the completion of the final product in the last operation or stage of production in the series. 35 ILCS 105/3-50.

Items constituting machinery include major mechanical machines or major components of such machines contributing to a manufacturing or assembling process. 86 Ill. Admin. Code 130.330(c)(2). Equipment is defined as an independent device or tool separate from machinery but essential to an integrated manufacturing or assembling process. 35 ILCS 105/3-50(4).

In one opinion by the IDOR, punches and shears used to cut holes in steel sheeting, welders used to assemble the product, and paint sprayers used to paint the product qualified for the exemption when used over 50% of the time in the manufacturing or assembling process. General Information Letter, ST 03-0079-GIL (June 20, 2003). Further, the IDOR has allowed machinery and equipment used primarily in the manufacture of screen-printed tangible personal property to qualify for the manufacturing machinery and equipment exemption. See Private Letter Ruling, ST 93-0212-PLR (April 30, 1993). In order for these items to qualify, the machinery or equipment must be used primarily in an exempt manner. *Id.* In another opinion, the IDOR distinguishes between those items acting as merely samples of finished goods and those items having a direct and physical impact on the process of creating the final product. See Illinois Department of Revenue Administrative Hearings, No. ST 01-12 (May 04, 2001). Therefore, a piece of machinery or equipment having a direct and physical impact on the process of creating the final product should qualify as exempt manufacturing machinery and equipment. *Id.*

While generally private letter rulings do not have precedential value, the Illinois Supreme Court has noted that where a private letter ruling clearly contains a policy of general applicability that reflects the policy which was in effect during the time period at issue, it may be considered 'instructive' as to the IDOR's construction of its regulations. Union Electric Co. v. Department of Revenue, 136 Ill. 2d 385 (1990).

### *Sale for Resale Exemption*

The Illinois ROT and UT are imposed on sellers of tangible personal property at retail. 35 ILCS 120/2; 35 ILCS 105/3. Excluded from the definition of a 'sale at retail' are items that are purchased for the purpose of resale as tangible personal property to the extent not first subjected to a use for which it was purchased. 35 ILCS 105/2. Furthermore,

property purchased for resale will not be considered to have been 'subjected to a use for which it was purchased' when it is resold 'as an ingredient of an intentionally produced product or by-product of manufacturing. 35 ILCS 105/2; 86 Ill. Admin. Code 130.210. Therefore, the resale exemption applies to 'used items' to the extent an item used is later resold as an ingredient of a manufactured product. *Id.*

The IDOR stated that purchases of items such as ink, which become part of the manufactured product, may qualify for the resale exemption. General Information Letter, ST 99-0216-GIL (July 13, 1999). In a different opinion, the IDOR stated that paint physically incorporated into a vehicle being repaired qualified as exempt from ROT when purchased by a body shop with a valid resale certificate. See General Information Letter, ST 99-0258-GIL (August 3, 1999).

## **Analysis**

### *Manufacturing Machinery and Equipment Exemption*

COMPANY's assembly-line machinery and equipment discussed in the facts [the rollers used to move the product along the line, the machinery and equipment used to cut and fold the metal, and the machinery and equipment (including the printing plates) used to transfer and dry the paints and/or inks onto the metal] should be exempt from the Illinois ROT and complementary UT under the Illinois manufacturing machinery and equipment exemption. COMPANY's integrated manufacturing process begins with the loading of metal onto the assembly line and does not end until the final product (a metal can) is produced. Per the requirements of the manufacturing machinery and equipment exemption, COMPANY's machinery and equipment for manufacturing cans is used exclusively (100%) for the manufacturing of tangible personal property. Furthermore, all of the machinery and equipment on the assembly line has a direct and physical impact on the process of creating the final can for COMPANY's customers. Accordingly, COMPANY's assembly-line machinery and equipment should be exempt from the Illinois ROT and complementary UT under the Illinois manufacturing machinery and equipment exemption.

### *Sale for Resale Exemption*

COMPANY's paints and/or inks used in the painting process should be exempt from the Illinois ROT and UT under the Illinois resale exemption. The paints and/or inks are physically incorporated into the manufactured cans and later are resold as an ingredient of the manufactured product. Therefore, the paints and/or inks meet the requirement of the Illinois resale exemption and should be exempt from the Illinois ROT and UT.

## **Contrary Law and Analysis Law**

### **Law**

### *Manufacturing Machinery and Equipment Exemption*

A section of the administrative code regarding the manufacturing machinery and equipment exemption provides as follows:

The printing process is not commonly regarded as manufacturing and court decisions have found that printing is not manufacturing. Therefore, machinery and equipment used in any printing application will not qualify for exemption. This includes graphic arts, newspapers, books, etc. as well as other industrial or commercial applications. 86 Ill. Admin. Code 130.330(b)(5).

For purposes of both the ROT and UT, 'graphic arts production' is defined, in relevant part, as follows:

[P]rinting, including ink jet printing, by one or more of the processes described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 of the North American Industry Classification System (NAICS) published by the U.S. Office of Management and Budget, 1997 edition. 35 ILCS 105/3-30; 35 ILCS 120/2-30.

For purposes of defining Subsector 323, entitled 'Printing and Related Support Activities,' the NAICS provides an example distinguishing T-shirt 'printing' from printing on fabric (or grey goods). The act of printing on fabric (or grey goods) has been deemed as not included in Subsector 323 by NAICS because it is not actually a 'printing' activity; rather, it is part of the process of finishing fabric and is included in the NAICS Textile Mills Group 31331, entitled 'Textile and Fabric Finishing Mills.' See NAICS, 1997 edition.

For purposes of manufacturing cans (including transferring images onto the cans), Subsector 332, entitled 'Fabricated Metal Product Manufacturing,' contains Group 332431, entitled 'Metal Can Manufacturing.' *Id.* Also included in Subsector 332 is Group 33281, entitled 'Coating, Engraving, Heat Treating, and Allied Activities,' which states, in part, that coloring and finishing metals and metal products is a Subsector 332 (i.e., manufacturing) activity, and specifically includes therein printing plates for fabricated metal product manufacturing purposes. See *Id.*

#### *Sale for Resale Exemption*

The IDOR has stated that when items are not part of tangible personal property when sold, such as solutions that are applied to products but then evaporate, the purchase of such items is taxable for that portion that is not part of the product when sold. General Information Letter, ST 01-0129-GIL (July 25, 2001). Such portions are deemed 'used' by the manufacturer and are, thus, subject to the ROT or UT. *Id.*

#### **Analysis**

##### *Manufacturing Machinery and Equipment Exemption*

A contrary argument may exist that the printing plates would not qualify for the manufacturing machinery and equipment exemption because the plates are used for 'printing.' However, the COMPANY's assembly-line machinery and equipment (including the printing plates) used to transfer paints and/or inks onto the metal is used exclusively as a part of the integrated manufacturing process of producing metal cans. COMPANY

utilizes an integrated manufacturing process that begins with the loading of metal onto the assembly line and does not end until the final product (a metal can) is produced.

Treating COMPANY's integrated manufacturing process activities as 'manufacturing activities' is consistent with NAICS classifications. The NAICS provides an example distinguishing T-shirt 'printing' from printing on fabric (or grey goods). The NAICS treats the latter as a fabric finishing (as opposed to a printing) activity classified under Group 31331, entitled 'Textile and Fabric Finishing Mills.' This demonstrates that the NAICS classifies an activity as 'printing' under NAICS Subsector 323 only after a particular activity's relationship to the production process of which it is a part is analyzed to determine the appropriate NAICS activity classification.

In COMPANY's case, just as printing on fabric (or grey goods) is considered an activity other than printing, the transfer of paints and/or inks onto the metal cans by COMPANY is an activity other than printing and is part of the actual process of manufacturing the cans. Therefore, it is a manufacturing activity. Furthermore, coloring and finishing metals and metal products (which is an activity performed by COMPANY) is a Subsector 332 (i.e., manufacturing) activity and the Subsector specifically includes therein printing plates for fabricated metal product manufacturing purposes.

Accordingly, based on the above analysis, COMPANY's assembly-line machinery and equipment used to transfer paints and/or inks onto the metal should be exempt from the Illinois ROT and complementary UT under the Illinois manufacturing machinery and equipment exemption.

#### *Sale for Resale Exemption*

The paints and/or inks used to fill the stamping machines on COMPANY's assembly line do not evaporate when rolled onto the metal cans, but rather constitute material components of the cans that are ultimately re-sold to COMPANY's customers. Therefore, all of the paints and/or inks physically incorporated into COMPANY's manufactured cans should be exempt from the Illinois ROT and UT.

#### **Conclusion**

The law provided above supports the conclusion that the assembly-line machinery and equipment [such as the rollers used to move the product along the line, the machinery and equipment used to cut and fold the metal, the machinery and equipment (including the printing plates) used to transfer and dry the paints and/or inks onto the metal] used by COMPANY in manufacturing cans qualifies as exempt tangible personal property under the manufacturing machinery and equipment exemption. COMPANY's assembly-line machinery and equipment are part of an integrated manufacturing process that begins with the loading of metal onto the assembly line and does not end until the final product (a metal can) is produced.

The law provided above also supports the conclusion that the paints and/or inks applied during the manufacturing process qualify for an exemption from ROT and UT under the resale exemption. The paints and/or inks used to fill the stamping machines on COMPANY's assembly lines do not evaporate off of the final manufactured can but, rather, constitute a material component of the can that is resold.

We respectfully request that the IDR issue a GIL with respect to the issues presented in this letter. Your assistance is appreciated. Please call the undersigned should you have any questions or need any additional information.

**DEPARTMENT'S RESPONSE:**

We regret that we cannot provide you with a specific answer in the context of a General Information Letter. For your general information, please see Section 130.330 of the Department's administrative rules regarding the manufacturing machinery and equipment exemption. 86 Ill. Adm. Code 130. 330. In regards to your question about paint that will be incorporated into manufactured goods and resold, please see Section 130.210 of the Department's rules regarding sales for resale. 86 Ill. Adm. Code 130. 210.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton  
Associate Counsel

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